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November 25, 2014

HAND DELIVERED

John Gioia  
Board of Supervisors  
Contra Costa County  
11780 San Pablo Avenue, Suite D  
El Cerrito, CA 94530

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SAN FRANCISCO BAY CONSERVATION  
& DEVELOPMENT COMMISSION

**Re: Hanson Aggregates and Earlier Sand Mining Litigation**

Dear Commissioner Gioia:

Thank you for your work with BCDC and your interest in the activities of Hanson Aggregates. BCDC staff briefed the Commission on the background of sand mining during the Commission's meeting on July 17, 2014. Following that staff report, you asked about some prior litigation involving sand miners that you recalled. Staff was not able to answer your questions, and I offered to prepare an answer for you. This letter fulfills that request.

Faced with the depletion of its land-based sources of construction-grade sand in the late 1990s, Hanson looked to marine-based sources of sand as an alternative. In 1999, Hanson purchased several mining companies operating in San Francisco Bay, including Tidewater Sand and Gravel, Inc. ("Tidewater"), Moe Sand Co., Olin Jones Sand Co., and Jones Sand Co. (collectively, the "Predecessor Companies"). The Predecessor Companies held mining leases in the Bay with the State Lands Commission ("SLC") and one or more private parties. From the representations given by the Predecessor Companies when they were sold to Hanson and the due diligence performed by Hanson and its counsel, it appeared that the Predecessor Companies were operating legally and in full compliance with all applicable permits and regulations.

Indeed, in 2001, after acquiring the Predecessor Companies, Hanson passed an SLC audit of the mining leases. Although the audit noted some minor record-keeping issues, the Senior Staff Counsel for the SLC wrote that "(w)e were pleased to see that Hanson has been operating according to the terms of the leases since it took them by assignment."

Unbeknownst to Hanson, however, the Predecessor Companies had been exceeding their permit limits and mining sand outside their lease boundaries. In addition, during a labor dispute between Hanson and the unions, a former employee of Tidewater filed a "whistleblower" claim alleging that the Predecessor Companies had underpaid royalties. BCDC and the California Attorney General's office filed separate actions against Hanson for these violations.

It should be noted that Hanson acquired the stock or partnership interest of each of the Predecessor Companies, thereby acquiring all of their respective assets and liabilities, including their legal liability for past violations of state regulations applying to their mining leases, even where that liability was neither caused nor created by Hanson.

Litigation followed and it has been resolved. More importantly, Hanson has made operational changes to prevent similar problems from arising again in the future, including the use of GPS technology to ensure that all mining is done within established boundaries. The mining leases with the State were amended by the SLC to provide for an easy-to-apply royalty rate on sand mined from the San Francisco Bay.

In a press release issued at the time by BCDC, then chairperson Barbara Kaufman commended Hanson "for taking responsibility for the violations and bringing a quick resolution to this enforcement problem."

Deputy Attorney General Joseph Rusconi ably represented the SLC in that litigation, and we continue to commend him and his office for their professionalism and dedication to public service. Now we and Mr. Rusconi and his client, the SLC, are jointly defending the six-year CEQA process that produced the EIR for the next ten years of sand mining that is important to the San Francisco Bay economy, construction activity, and erecting sea-level-rise protective works.

We are happy to work with you, other commissioners and staff of BCDC, and other stakeholders as we continue to mine sand in the Bay.

Please contact me if you have any questions.

Sincerely,



Mike F. Roth  
Vice President Region West

MR/jlw

cc: **Larry Goldzband**, Executive Director of BCDC